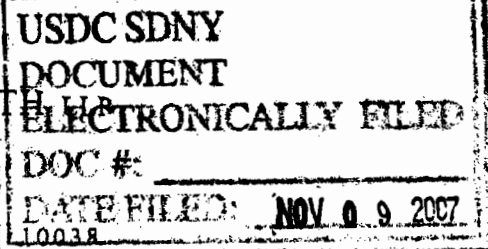


LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

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JOANNE J. ROMERO  
DIRECT DIAL: 212.232.1331  
E-MAIL: romero@lbbslaw.com

November 9, 2007

FILE NO.  
TBD

VIA FACSIMILE (212) 805-0426

Hon. Laura Taylor Swain  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St., Room 755  
New York, NY 10007

**MEMO ENDORSED**

IT IS ORDERED that counsel to whom this Memo is sent is responsible for faxing or otherwise delivering promptly a copy to all counsel and unrepresented parties and filing a certificate of such service within 5 days from the date hereof. Do not fax such certification to Chambers.

Re: Capitol Records, Inc. v. City Hall Records, Inc. and Robin Cohn,  
Civil Action No. 07-CV-6488 (LTS)(KNF)

Dear Judge Swain:

This firm was retained yesterday to represent City Hall Records, Inc. and Robin Cohn (collectively, the "Defendants") as local counsel in the action styled *Capitol Records, Inc. v. City Hall Records, Inc. and Robin Cohn*, Civil Action No. 07-CV-6488 (LTS)(KNF). Pursuant to Your Honor's Individual Practices, we write on behalf of Defendants to respectfully request: (1) an extension of the time to file an answer or otherwise respond to the complaint to December 10, 2007; and (2) an adjournment of the pre-trial conference, currently scheduled for November 30, 2007, to January 25, 2008.

Time To Answer

Plaintiff consents to the current request for extension of the time to file an answer or otherwise respond to the complaint until December 10, 2007. This is the first request to Your Honor for an extension of the time to file an answer or otherwise respond to the complaint. However, as the parties have been diligently exploring settlement, the parties have previously agreed to extend Defendants' time to answer or otherwise respond to the complaint from mid-September to September 27, 2007, October 29, 2007 and subsequently to November 12, 2007 (see Exhibit A, attached herewith).

*faxed*  
Copies ~~mailed~~ to All Counsel  
Chambers of Judge Swain 11-9-07

LEWIS BRISBOIS BISGAARD & SMITH LLP

Hon. Laura Taylor Swain  
November 9, 2007

Page 2

Pre-Trial Conference


This week, on November 5, 2007, Defendants' counsel first learned of the August 31, 2007 Initial Conference Order (the "Order") scheduling the pre-trial conference. Defendants and Plaintiffs seek an adjournment of the initial conference from November 30, 2007 to January 25, 2008 in order to allow the parties to continue exchanges of information for settlement discussions. Plaintiff's counsel has consented to this adjournment. This is the first request for an adjournment of the pre-trial conference.

Accordingly, on behalf of Defendants, we respectfully request that Your Honor so-order the: (1) extension of the time to file an answer or otherwise respond to the complaint; and (2) adjournment of the pre-trial conference.

On behalf of Defendants, we reserve the right to rely upon any defense as set forth in Rule 12(b) of the Federal Rules of Civil Procedure, and nothing stated herein shall constitute waiver of any such defense.

Thank you in advance for your consideration of this request.

Respectfully submitted,



Joanne J. Romero for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

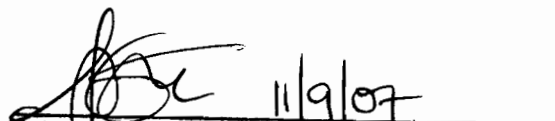
Encl. Exhibit A

cc: Via Facsimile (415) 986-2827  
Michael F. Kelleher  
Folger Levin & Kahn LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111  
*Attorneys for Defendants*

Via Facsimile (866) 766-1678  
Matthew Jan Oppenheim  
Oppenheim Group  
7304 River Falls Drive  
Potomac, MD 20854  
*Attorneys for Plaintiff*

*The requests are granted.  
The conference is adjourned to  
January 24, 2007 at 4:00 pm.*

SO ORDERED.



11/9/07  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A**

(11/8/2007) JOANNE ROMERO - RE: Extension

Page 1

**From:** "Matt Oppenheim" <matt@oppenheimgroup.net>  
**To:** "Michael Kelleher" <m.kelleher@flk.com>  
**CC:** "Gregory Call" <gcall@flk.com>  
**Date:** 9/24/2007 3:22 PM  
**Subject:** RE: Extension

Mike -

This is agreeable.

Matt Oppenheim

**From:** Michael Kelleher [mailto:m.kelleher@flk.com]  
**Sent:** Monday, September 24, 2007 2:44 PM  
**To:** matt@oppenheimgroup.net  
**Cc:** Gregory Call  
**Subject:** Extension

Matt,

I write to confirm our agreement that my clients, City Hall Records and Robin Cohn, will have until October 11, 2007 (an extension of 2 weeks from the previously-agreed due date of 9/27/07) to respond to the complaint filed by your client, Capitol Records, Inc., in the Southern District of New York, case number 07-CV-6488.

We have also agreed that my clients will provide a spreadsheet summarizing sales of the recordings in dispute for the period beginning July 18, 2004 (3 years before the filing of Capitol's complaint) through the present. I expect to have that spreadsheet to you a week from today, on Monday, October 1, 2007.

Please reply to this email confirming your agreement.

Thank you for your courtesy in granting this extension.

Best regards,

Mike Kelleher

(11/8/2007) JOANNE ROMERO - RE: Extension

Page 2

Michael F. Kelleher  
Folger Levin & Kahn LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111  
Main Tel: 415.986.2800  
Dir. Tel: 415.365.7813  
Fax: 415.986.2827  
E-mail: [mkelleher@flk.com](mailto:mkelleher@flk.com)  
Web: [www.flk.com](http://www.flk.com)

The message above is intended for the designated recipient(s) only and may contain privileged attorney-client communications. If you are not an intended recipient, please delete the message and notify the sender at the telephone number or e-mail address above.

(11/8/2007) JOANNE ROMERO - RE: Confirmation of discussion

Page 1

**From:** "Michael Kelleher" <mkleher@flk.com>  
**To:** <matt@oppenheimgroup.net>  
**CC:** "Gregory Call" <gcall@flk.com>, "Kay Martin" <kmartin@flk.com>  
**Date:** 10/11/2007 7:24 PM  
**Subject:** RE: Confirmation of discussion

Matt,

We have promised to provide the listings by October 18, and we plan and expect to do so. I understand that you granted the extension in return for the promise to provide those listings by October 18. If an unexpected problem arises, I will of course let you know and we can deal with it then.

Best regards,  
Mike Kelleher

>>> "Matt Oppenheim" <matt@oppenheimgroup.net> 10/11/2007 3:43 PM >>>

Mike \*

I agree with your description with one minor caveat. The extension of time is conditioned on the provision of information as described in the email. I believe that was what you intended, so this is likely not an issue. If not, please let me know.

Thanks,  
Matt

From: Michael Kelleher [mailto:mkleher@flk.com]  
Sent: Thursday, October 11, 2007 6:12 PM  
To: matt@oppenheimgroup.net  
Cc: Gregory Call; Kay Martin; Michael Kelleher  
Subject: Confirmation of discussion

Matt,

I write to confirm our conversation today.

In order to provide additional information to Capitol for it to make a settlement demand, we agreed that City Hall Records will provide listings of recordings from the following labels: Proper, Memoir, Universe, Corinthian, Cimarron, Akarma, Acrobat and ASV (a/k/a Living Era). With the exception of ASV/Living Era, these labels are identified in paragraph 21 of the complaint. With respect to Taragon, another label listed in paragraph 21, we are holding off on gathering information until Capitol investigates a possible license granted to Taragon. For recordings from these labels that do not identify the artist (e.g., "Dawn of Doowop" which lists the artists as "various"), City Hall will also provide track listings. These listings will be delivered to you on or before October 18, 2007.

From those listings, Capitol will identify for City Hall those



(11/8/2007) JOANNE ROMERO - RE: Confirmation of discussion

Page 2

recordings as to which Capitol claims it has rights. After receiving that identification, City Hall will then run and provide sales reports for those recordings as it did with the sales reports previously delivered to you.

We agreed that the listings and sales reports provided by City Hall Records will be treated as confidential business information and not distributed to third parties nor used for any purpose other than this litigation.

We further agreed that Capitol would provide a further extension for defendants' response to the complaint until October 29, 2007.

Please let me know if you disagree with this email in any respect.

Thank you for your cooperation.

Mike Kelleher

Michael F. Kelleher  
Folger Levin & Kahn LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111  
Main Tel: 415.986.2800  
Dir. Tel: 415.365.7813  
Fax: 415.986.2827  
E-mail: mkelleher@flk.com  
Web: www.flk.com

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(11/8/2007) JOANNE ROMERO - Re: Capitol v. City Hall

Page 1

**From:** "Michael Kelleher" <mkel@flk.com>  
**To:** <matt@oppenheimgroup.net>  
**CC:** <robin@cityhallrecords.com>  
**Date:** 10/26/2007 6:03 PM  
**Subject:** Re: Capitol v. City Hall

Matt,  
Thank you for your message and the extension.

Have a good weekend,  
Mike

Michael F. Kelleher  
Folger Levin & Kahn LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111  
Main Tel: 415.986.2800  
Dir. Tel: 415.365.7813  
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>>> "Matt Oppenheim" <matt@oppenheimgroup.net> 10/26/2007 2:23 PM >>>

Mike \*

I received your message seeking to extend the time to answer in Capitol's case against City Hall and Robin Cohn for another 2 weeks. We are amenable to such a continued extension contingent on your continued cooperation in our settlement process.

Matt Oppenheim